**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.3271 OF 2001.**
**WITH**
**CIVIL APPLICATION NO. 716 OF 2004**
**IN**
**FIRST APPEAL NO.82 OF 2000.**

Vijaynath Hridaynarayan Mishra. ... Applicant.
Versus.
Kailashnath Hridaynarayan Mishra. ... Respondent.

Shri A.M.Rajabally for the Applicant.

Shri Anil R.Mishra for the Respondent.

Shri A.P.Guram, Asstt.Prothonotary (Admn.) present on behalf of Court Receiver.

**CORAM : ABHAY S.OKA, J.**

**DATED : 19th November, 2007.**

**P.C.:**

1. Heard the Advocates appearing for the parties. The Applicant in these Applications is the original unsuccessful Plaintiff. During the pendency of the suit filed by the Applicant, by order dated 25th July 1994, the trial Court granted the following interim relief:

> "A Court Receiver is to be appointed and the Court Receiver will take formal possession of the property, draw a list of all the tenants, rent payable by them, deposits if any paid by them and he shall also cause measurement of the property and tenaments i.e. rooms in existence. The Court Receiver will allow the Defendant herein to act as his agent to

> collect the rent and to maintain the property as earlier. The Defendant shall after receipt of rent, after deducting outgoings and municipal taxes and other taxes, shall deposit 1/4 of the amount per month with the Court Receiver. The Plaintiff is allowed to withdraw the amount deposited earlier and in future also. In the set of circumstances no costs. Defendant has requested for stay of the order, the order is kept in abeyance till 1-9-1994, 48 hours notice in the event of any interim relief. Defendant waives service for writ of summons, he shall file written statement within 4 months. Adjourned to 13-12-1994."

In Civil Application No.9317 of 1997 by way of ad-interim relief, this Court continued operation of the order dated 25th July 1994 passed by the trial Court.

2. The case of the Applicant made out in Civil Application No.716 of 2004 is that the Respondent has committed breachs of the terms of the agency agreement executed by him in favour of the Court Receiver. The allegation is that the illegal constructions have been made in the property and some of the tenancies have been transferred. The allegation is that proper accounts are

not furnished by the Respondent and collection of the rent is not made regularly.

3. The stand taken by the Respondent is that there are no breaches committed by him. According to him whenever it was found that third parties are inducted, he has taken steps by issuing notices. He has also written letters to the Court Receiver.

4. It is an admitted position that neither the Applicant nor the Respondent are in actual physical possession of the suit property and the same is occupied by the tenants/occupants. As an agent of the Court Receiver, the Respondent is under an obligation to collect rent and after deducting the outgoings and municipal taxes and other taxes, he is under an obligation to deposit 1/4th of the amount per month with the Court Receiver. The Applicant has been permitted to withdraw the said amount.

5. There is a dispute as to whether the Respondent is instrumental in transfer of some of the premises on the suit property. The fact remains that the premises have changed hands and there has been a delay in collection of rent and submitting accounts. The work of collecting rent and looking after the property can be undertaken by the Court Receiver himself.

6. Hence the Applications are disposed of by the following order:

i) The interim order dated 25th July 1994 passed by the trial Court will continue to operate till disposal of the Appeal with modification that none of the parties will act as an Agent of the Court Receiver. The Court Receiver shall collect the rent and outgoings from the occupants/tenants and will maintain the property. After deducting outgoings, municipal taxes, and other taxes, his fees and charges, the Court Receiver will pay 3/4th of the remaining amount to the Respondent and will pay the balance 1/4th of the amount of the Applicant.

ii) This order will become operative from 1st January 2008. In the meanwhile the Respondent will submit accounts and deposit the necessary amounts with the Court Receiver.

iii) The Receiver will verify the accounts submitted by the Respondent and will submit a report to this Court for seeking appropriate directions, if any.

iv) The Receiver will also submit a report to this Court seeking directions for taking steps against the alleged unauthorised constructions and as against the persons who are allegedly inducted in the suit property.

v) Civil Applications and the Receiver's Report No.353 of 2007 are accordingly disposed of.

' **Judge.**